

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

C.P.NO.D-4131, 4132 & 4134 of 2018

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before:-

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Omar Siyal

- (1) Rustam Ali & another (C.P. No.D-4131/2018)
(2) Jam Nafees Ali Khan (C.P. No.D-4132/2018)
(3) Muhammad Bux (C.P. No.D-4134/2018).....Petitioners

V/s

Election Commission of Pakistan & others.....Respondents

Date of hearing: 12.06.2018

Mr.Rafiq Ahmed Kalwar, Advocate for the Petitioners

Ms.Mamona Nasreen, Advocate for the Election Commission of Pakistan.

Mr. Abdullah Hanjra, Law Officer, Election Commission of Pakistan, Syed Nadeem Haider, Regional Election Commissioner, Shaheed Benazirabad and Mr.Muhammad Yousuf, District Election Commissioner, Karachi Central and Zaheer Ahmed Sehto, Member Delimitation Committee/District Election Commissioner, Kashmore.

Mr. Shaikh Liaquat Hussain, D.A.G.

Ms.Rukhsana Minhas Durrani, State Counsel.

Mr.Jam Zeeshan, Advocate for Intervener/Applicant Muhammad Aslam in C.P.No.D-4131/2018.

Muhammad Ali Mazhar, J: These Constitution Petitions have been brought to challenge the order dated 26.04.2018 passed by Election Commission of Pakistan with reference to the delimitation of Constituencies-2018, district Sanghar. Record reflects that at least 24 representations have been decided

through a common impugned order but only three petitioners have challenged delimitation order in this court.

2. The petitioners have approached this court for setting aside the impugned order dated 26.04.2018 whereby delimitation of NA-215 Sanghar-I, NA-216 Sanghar-II and NA-217 Sanghar-III have been finalized. According to the petitioners, the delimitation carried out by the Election Commission of Pakistan was illegal, unlawful and unconstitutional. They have sought the directions of this court against the respondent No.1 to carve out National Assembly constituencies for district Sanghar by combining PS-41 and PS-42 as NA-215 Sanghar-I, PS-43 and PS-44 as NA-216 Sanghar-II and PS-45 and PS-46 as NA-217 Sanghar-III.

3. The learned counsel for the petitioners argued that Election Commission of Pakistan has passed a non-speaking order. On the face of it the impugned order appears to be in violation of Section 20 of the Election Act, 2017. It was further averred that the present form of delimitation has disturbed the uniformity of administrative boundaries, public convenience and homogeneity due to irrational distribution of areas which made impossible for Election Commission of Pakistan to conduct fair election. While exercising the task of delimitation, the Delimitation Committee failed to observe the principles of delimitation enshrined under Rule 10(5) of the Elections Rules, 2017. The main purpose of delimitation is to divide geographical areas into territorial constituencies impartially to avoid the act of gerrymandering but the present delimitation has been carried out to benefit a particular political party which amounts to the worst kind of gerrymandering.

4. On the contrary, the Law Officer of the ECP referred to the comments and addressed that the seats of National Assembly constituencies of district Sanghar have been delimited in

accordance with Section 20 of the Elections Act, 2017 read with Rule 10 (5) of the Election Rules, 2017. The Delimitation Committee adhered to all principles of delimitation i.e. geographically compact areas, existing boundaries of administrative units, facilities of communication, public convenience, homogeneity and other cognate factors. The delimitation was started from northern end of the district and proceeded clockwise in zigzag manner keeping in mind the population. It was further contended that the impugned order was passed by the ECP on 24 representations with proper application of mind. The allowable ratio of variation in the population provided under the law was also kept in mind and obeyed.

5. Heard the arguments. We have examined the impugned order minutely. In second paragraph of the impugned order the contentions of the present petitioners have been jot down by the ECP which are as follows:-

“Petitions of Haji Khuda Bux Dars, Jam Nafees Ali, Mukhtiar Ali and Muhammad Bux are identical in nature. Learned counsel for the petitioners has stated that Khipro Taluka malafidely included in NA-216 with Jam Nawaz Ali i.e. PS-43 whereas there is no direct road link between Jam Nawaz Ali and Khipro. The counsel has proposed that Taluka Khipro of PS-42 may be shifted to PS-41. It has further suggested that area of whole PS-42 may be shifted to PS-41 that will constitute NA-215. Learned counsel further proposed that Taluka Tando Adam i.e. PS-44 may be moved along with Jam Nawaz Ali i.e. PS-43 to constitute NA-216. He has further suggested that Shahdadpur Taluka i.e. PS-45 may be annexed with Sinjhor Taluka i.e. PS-46 to constitute NA-217. In other words, petitioners desire to re-delimit all the three National Assembly constituencies of Sanghar district according to their proposed scheme.”

6. No doubt according to the principles of delimitation laid down under Section 20 of the Elections Act, 2017 a mandate has been given for delimitation keeping in mind basic facets including the distribution of population in geographically compact areas, physical features, existing boundaries of administrative units, facilities of communication, public convenience and other cognate factors to ensure homogeneity in the creation of constituencies with a rider that as far as possible, variation in population of constituencies of an Assembly shall not ordinarily exceed 10

percent and if the limit of 10 percent is exceeded in an exceptional case, the Commission has to record reasons in the delimitation order. Much emphasis have been made by the learned counsel for the petitioners while signifying sub-Rule (5) of Rule 10 of the Election Rules, 2017 that as far as possible, the delimitation should start from the Northern end of the district and proceed clock-wise in zigzag manner keeping in view the population so that the constituencies shall remain as close as may be practicable to the quota. According to first proviso attached to sub-Rule (5), the quota shall be determined by dividing total population of the district or the agency with number of seats allocated to that district or agency. Whereas, in terms of second proviso the variation in population between two or more constituencies shall not ordinarily exceed 10 percent and the Delimitation Committee shall record reasons if in exceptional circumstances the variation has to exceed the limit. At the time of preliminary delimitation, a mechanism was laid down to file proposals in the form of representation with a responsibility and obligation to ECP to decide the same in accordance with law. Placing of proposal to ECP by any voter of any constituency may invite the attention of the ECP to consider the proposal in accordance with law but at the same time, one cannot claim as his vested right that whatever proposal placed by him should be considered and accepted by ECP in letter and spirit. To contest the election and right of franchise is a fundamental right but to contest the election on the basis of delimitation at one's own philosophy and aspiration is not a fundamental right.

7. Mr. Zaheer Ahmed Sehto, Member Delimitation Committee has also demonstrated the limits and boundaries of National Assembly constituencies in question. At the very outset he addressed to us that in the present form of delimitation carried out by ECP, PS-41 and PS-46 are included in NA-215 whereas PS-42 and PS-43 in NA-216 and PS-44 and PS-45 in NA-217. On the

contrary, the petitioners want that PS-41 and PS-42 should be included in NA-215, PS-43 and PS-44 in NA-216 and PS-45 and PS-46 in NA-217. According to the map displayed to us by the Delimitation Officer in open court in presence of all learned counsel, we do not find any illegality or violation which may suffice to hold that the areas are not geographically compacted as compare to existing boundaries of administrative units and other cognate factors to ensure homogeneity. The presentation through map divulges that the exercise of delimitation was started from Northern end and then continued clockwise in a zigzag manner. The Delimitation Officer vigorously argued that in the present form of delimitation there is no violation of the basic principle of maintaining 10% population variation which assertion had not been denied by the learned counsel for the petitioners. The impugned order reflects that the Members of the Delimitation Committee explained issues raised by the persons including the petitioners who filed their representation and the Committee also took into consideration the geographic conditions, proximity and impact of population variation. However, in order to facilitate the people of area and the public convenience, the ECP partially accepted the representation of some petitioners before them and modified the constituencies to some extent with regard to National Assembly and Provincial Assembly constituencies.

8. The learned counsel for the petitioners in his arguments took a plea that the present delimitation has been carried out by ECP to commit gerrymandering in favour of one political party but they failed to point out any specific plea or name of person or party and on this verbal assertion the petitioners want us to upset the entire delimitation and reshuffling/restructuring of six Provincial Assembly seats in different NA seats.

9. At this juncture, we would also like to point out that one Muhammad Aslam has also filed an application under Order I

Rule 10 C.P.C. for impleading him as respondent who was represented by Mr. Jam Zeeshan advocate. The learned counsel argued that the preliminary delimitation was carried out in accordance with the provisions of Elections Act, 2017 and Election Rules, 2017 which closely followed the earlier delimitation and created a less possible disturbance in the existing voter blocks. He further argued that if the petitions are accepted it would vary the population of National Assemblies more than 10% and at least half of the population would be replaced and earmarked to new constituencies. He further argued that the present delimitation was carried out in most sensible manner for determining the Northern end of the district i.e. taking most Northern point from the center of the district.

10. We do not find any substance in the contentions raised by the petitioners for upsetting the entire delimitation process. As a result of above discussion, the petitions are dismissed in limine with no order as to cost.

Karachi:
Dated.04.7.2018

Judge

Judge